Supreme Court, U.S.
FILED

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IN THE

Supreme Court of the United States

In the Matter of the Visitation of
SAMANTHA TAYLOR THURGOOD, a Minor

DARRYL THURGOOD

Petitioner,

v.

The Honorable Michael K. Burton Individually,
and in his capacity as Third District Court Judge,
The Honorable David S. Young Individually,
and in his capacity as Third District Court Judge,
The State of Utah, and John Does one through five

Respondents.

On Appeal
To The Tenth Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

Darryl Thurgood
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44 pp

QUESTIONS PRESENTED FOR REVIEW

1. Was the *Rooker-Feldman* applicable and appropriately applied in this case?

2. Did the Utah Trial Court violate the due process rights and civil rights of a parent under the United States Constitution, in relying on Utah Code Ann. 30-5-2 or Utah Code Ann. 30-5-2 as revised by Chapter 165, 2002, to order that a fit and proper parent submit to visitation evaluation and a trial to determine grandparent visitation based on the best interest of the child?

3. If the parental presumption has not been rebutted and there is no final order, judgment, or stipulation, is the application of Utah Code Ann. 30-5-2 or Utah Code Ann. 30-5-2, as revised by Chapter 165, 2002, unenforceable?

4. Did the Utah Trial Court violate the due process rights and civil rights of a parent under the United States Constitution, in relying on Utah Code Ann. 30-5-2 or Utah Code Ann. 30-5-2 as revised by Chapter 165, 2002, in granting visitation to a person that is not a party to the litigation?

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TABLE OF CITED AUTHORITIES

Succession of Reiss 15 So 151 La (1894)
25 L.R.A. 798 No 11,347

Meyer v. Nebraska 262 U.S. 390, 399 (1923)

Pierce v. Society of Sisters 268 U.S. 535 (1925)

Prince v. Massachusetts 321 U.S. 158 (1994)

Stanley v. Illinois 405 U.S. 645, 651 (1972)

Wisconsin v. Yoder 405, 406 U.S. 205, 230, 234 (1972)

Parham v. J.R. 584 U.S. 602, 604 (1979)

Santosky v. Kramer 455 U.S. 745, 753 (1982)

Reno v. Flores 507 U.S. 292,304 (1993)

Troxel v. Granville 520 U.S. 57 (2000)

Dodge v. Graville 00-1300 U.S. (2001)

Griswold v. Connecticut 381 U.S. 479, 485, 386 (1965)

Roe v. Wade 410, U.S. 113, 93 (1973)

Marbury v. Madison (1803)

Washington v. Glucksberg 521 U.S. 702, 720 (1979)

Palko v. Connecticut No. 135 (1937)

McLaughlin v. United Virginia Bank, 955 F.2d 930, 934 (4th Cir. 1992)

McClellan v. Carland, 217 U.S. 268, 282, 30 S.Ct. 501, 54 L.Ed. 762 (1910)

Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976).

Moses H. Cone 460 U.S. at 28, 103 S. Ct. 927

Darryl Thurgood petitions for a Writ of Certiorari to review the judgment of the Tenth Circuit Court of Appeals in this case.

OPINIONS BELOW

The February 25, 2003 Order and Judgment of the United States Court Of Appeals For The Tenth Circuit, Case No. 03-4030, attached as Appendix A, upheld the Utah Federal District Court Order Of Dismissal based on the *Rooker-Feldman* Doctrine. The Utah Federal District Court issued its Order Of Dismissal of Case No. 2:02CV1385DS on January 9, 2003, attached as Appendix B, based on the *Rooker-Feldman* Doctrine.

STATEMENT OF JURISDICTION

The District Courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.[1]

On February 9, 2003, the Utah Federal District Court dismissed an action brought by Darryl Thurgood for a violation of his civil rights, brought in part, pursuant to Title 42 U.S.C., Sections 1983, 1985 and Article XIV Section 1 of the United States Constitution and the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon Title 28, Sections 1331 and 1343 of the United States Codes and statutory provisions thereto. Petitioner has the right, pursuant to 28 U.S.C. 1257 to ask this court to review and respond to the issues presented herein.

STATUTES INVOLVED

Revised Code of Utah Ann. 30-5-2(1)(2)(a-g)(6):

Former Utah Code Ann. 30-5-2(1)(2)(3)(a-e)(5)

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[1] United States Constitution, Article III, Sections 1 and 2.

Utah Code Ann. 78-32-12.2 - Sanctions

Utah Code Ann. 78-32-10 - Contempt – Action by the Court

STATEMENT OF THE CASE

Samantha Taylor Thurgood is the daughter of Darryl and Shauna Thurgood who were married on August 21, 1991. They were later divorced with the decree of divorce being granted on February 8, 1994. Samantha was born December 5, 1995 with the parents living together. The parents separated approximately four months after Samantha's birth. Shauna and Samantha lived with Shauna's mother, Darlene Uzelac, in Darlene's home, for a period of time before Shauna moved into her own home. Darryl continued to regularly visit his daughter in and out of Shauna's home. Upon Shauna's death, both Robert and Darlene Uzelac moved into Shauna's home and assumed physical possession of the residence where they still reside today.

In April 2000 Shauna sought medical attention for flu like symptoms and was hospitalized, choosing not to inform Darryl of her illness. Her condition worsened rapidly. Darryl was notified of the gravity of Shauna's condition by his attorney when she failed to answer a set of interrogatories. Shauna was diagnosed with viral.cardio mythopthy and died of multiple organ failure on April 28, 2000.

Darryl was not notified of Shauna's death by her family and only became aware she had died when he read her obituary in the local newspaper. Darlene Uzelac, the maternal grandmother, took physical possession of Samantha and refused to release her to her father. Darryl's attorney filed a temporary restraining order in the Utah Third District Court and was finally awarded physical possession and custody of his daughter on June 20, 2000.

Darlene Uzelac converted a probate filing into a suit for custody of Samantha on May 4, 2000. Judge David S. Young granted Darlene Uzelac approximately nine months to conduct discovery, including deposing Darryl and his parents, to form a prima facia argument to rebutted the parental presumption. At the end of the discovery period Darlene was unable to produce any argument to the court. On September 13, 2000 the court determined, "no evidence had been submitted to rebut the parental presumption" nor did the court "believe any ever would be", and granted permanent custody of Samantha to her father. At this point Darlene amended her custody complaint to a prayer for custody or in the alternative visitation. Upon the filing of the amended complaint, the trial court ordered Darryl to participate in visitation evaluation with a court appointed psychologist and trial to determine the best interest of Samantha relating to visitation with the grandmother. In addition the court ordered visitation between Samantha and Darlene but left the amount of the visitation up to the discretion of the father.

Due to the animosity, problems and stress created by the court ordered visitation with the grandmother and the various people she exposed Samantha to, Darryl severely limited the visitation. Darlene filed a motion in re contempt. The case was re-assigned to Judge Michael Burton. At hearing on June 11, 2002 the court did not find any evidence of contempt, however, it fixed the visitation to be the first weekend of each month from Friday through Sunday until further notice with the "visitation to be used to further evaluation". The case was to proceed to trial although no trial date was set. In addition the court granted the same visitation to Robert Uzelac, the maternal grandfather, even though he had not filed as a party in interest in the action.

The Utah case was re-assigned to Judge Joseph C. Fratto. Darlene once again filed a motion for contempt asserting Darryl was frustrating visitation. On January 9, 2003, the trial court

found Darryl in contempt, sentencing him to sixty (60) days in jail with the sentence to be held in abeyance providing Darryl complied with a new visitation schedule. The court increased the visitation to every other weekend from Friday through Sunday with Darryl ordered to deliver Samantha to the grandparent's home on Friday and pick her up on Sunday evening, a round trip of approximately 125 miles. The court set a trial date of September 11, 2003 and ordered the continuation of a visitation evaluation by a court appointed psychologist. The court has since vacated the trial date.

REASONS FOR GRANTING THE WRIT

I

APPLICATION OF THE ROOKER-FELDMAN DOCTRINE

As a general rule, our dual system of federal and state governments allows parallel actions to proceed to judgment until one becomes preclusive of the other. "[t]he rule is well recognized that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction.'" *McLaughlin v. United Virginia Bank*, 955 F.2d 930, 934 (4th Cir. 1992) (quoting *McClellan v. Carland*, 217 U.S. 268, 282, 30 S.Ct. 501, 54 L.Ed. 762 (1910)) In addition the federal courts are bound by a "virtually unflagging obligation ... to exercise the jurisdiction given them." *Colorado River Water Conservation Dist. V. United States*, 424 U.S. 800, 817, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976). The federal Court should consider the critical issues of (1) whether state or federal law provides the rule of decision on the merits, and (2) the adequacy of the state proceedings to protect the parties rights. The Federal Court should abstain from recognizing jurisdiction only when "the parallel state-court litigation will be an adequate vehicle

for the complete and prompt resolution of the issue between the parties."[2]

The Utah Federal District Court dismissed Darryl's complaint based upon the *Rooker-Feldman* Doctrine citing to *Kenman Engineering*[3] among other cases, which prohibits a lower federal court from considering claims actually decided by a state court. Under this Doctrine the District Court concluded it could not consider Petitioner's claims due to lack of jurisdiction. A lower federal court may not consider claims actually decided in a state court and which are inextricable intertwined with a prior state court judgment. It is the petitioner's position the issues in the federal court, although stemming from the actions of the state court, are separate and distinct. The issues presented to the federal court would not exist if the state court had not enacted the prior and existing statutes and applied them as it has. There has been no final order, judgment or stipulation in the state case. A request for final order was made of the current trial court judge and it was denied without comment in a minute entry. The current court ordered visitation is open-ended and could literally run until the child is emancipated. The parties to the federal case are not the same parties named in the state case. The fundamental federal issue centers on whether the Utah's state statutes, as they are being applied to Darryl Thurgood, are a denial of his rights to due process and a violation of his civil rights under the United States Constitution. When do a grandparent's rights to petition for visitation violate a fit and proper parents rights to due process and his civil rights under the United States Constitution?

In the Appeal filed with the Tenth Circuit Court, Darryl dealt with the issues contained in the *Rooker-Feldman* Doctrine. In part, on item No. 3 of the docketing statement, it stated, "To allow the case in the state action to go forward, will continue

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[2] Moses H. Cone 460 U.S. at 28, 103 S.Ct. 927

[3] Kenman Engineering v. City of Union, 314 F.3d 468 (10th Cir. 2002)

to subject appellant to ongoing abuse and injury." A truer statement was never made. The state of Utah continues to allow the maternal grandmother to litigate against the father, a fit and proper parent, the court to order increased abusive and excessive visitation and to do so under the threat of incarceration, in excess of that even allowed under Utah law.[4] After the Order of dismissal was issued by the Federal District Court, based on the *Rooker*-Feldman Doctrine, the trial judge in the state court doubled the amount of visitation granted to the maternal grandmother and grandfather to every other weekend from Friday through Sunday, with the parent being forced to deliver the child and pick her up, a round trip of over 125 miles. Any failure to do so will result in 60 days in the county jail. The state court has repeatedly refused to provide conclusions of law to define those statutes upon which it is relying or to grant any deference to the father. This case is now before the highest court in the land, which has ultimate jurisdiction. It is the responsibility of the United States Supreme Court, to decide for itself, the issue of when the rights of grandparents to seek visitation crosses the line and become a violation of a fit and proper parent's civil rights as defined in the United States Constitution. The issue has national import and this decision would significantly reduce or narrow the grandparent visitation issues in all states.

II

THE STATE QUESTIONS

One of the first cases to be decided by the United States Supreme Court was the landmark case of *Marbury v. Madison*,[5] which was decided two hundred years ago in 1803. This may

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[4] Utah Code Ann. 78-32-10

[5] Marbury v. Madison, 177, 180 (1803)

have been the first case to uphold the premise that you cannot create statutory law conflicting with the United States Constitution when it stated, "that a law repugnant to the Constitution is void; and that *courts*, are bound by that instrument".

The state of Utah had adopted a statute governing grandparent visitation, which was in full force and effect when the state action *The Estate of Samantha Taylor Thurgood* was filed in June 2000.[6] This statute relied on the best interest of the child as its standard for granting grandparent visitation. The United States Supreme Court issued its ruling in *Troxel v. Granville*[7] in 2000. In what we believe was an effort to come into compliance with federal case law, Utah revised its grandparent visitation statute in the 2002 legislative session.

The revised grandparent visitation statute contained language, which purported to give the parent, heightened protection by inserting the language, "There is a rebuttable presumption that a parent's decision with regard to grandparent visitation is in the grandchild's best interest." While the Washington State statute in *Troxel*[7] was determined to be overly broad, Utah's statute before being revised in 2002 was more narrowly written, relying primarily on best interest. Utah's new statute, with the exception of third party language, is now more broadly written than the Washington state statute. The court may override the parent's decision if it finds the grandparent has rebutted the parental presumption "based upon factors which the court considers to be relevant" using the language in the statute, "**such as whether:**" This language allows the court to rebut the parental presumption using such listed criteria as whether the grandparent is fit and proper, or if one of the parents has died, or if it is in the child's best interest. The court can go on to use any criteria it might decide in its sole discretion is adequate. If in the grandparents view, the parent is not

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[6] Utah Code Ann. 30-5-2

[7] Troxel v. Granville 530 U.S. (2000)

complying with the visitation as ordered by the court, they may petition for sanctions under Utah Code Ann. 78-32-12.2.[8]

Utah Code Ann 78-32-12.2 allows a grandparent to seek sanctions based on parenting statutes. Such a petition may be brought by "a parent, a grandparent as provided in Section 30-5-2, by other immediate family members, or upon the court's own motion alleging that a parent is not complying with a parent-time order in decree of divorce or a subsequent parent-time order". Absolutely nowhere in statute 78-32-12.2 does the word "visitation" appear. All references are to "parent-time". Grandparents simply cannot, by definition, be granted parent-time, leaving a substantial question mark as to the enforceability of this statute in this case. The sanction can result in the fit and proper parent being fined $1,000.00 and incarcerated in the county jail for a period not to exceed 30 days.

It can reasonably be assumed and argued the state legislature will always attempt to pass legislation that is for the public good. The state has a duty and obligation to assert its parens patrie rights if the child is at risk. However, should the state believe the situation to be critical enough to assert this right in place of the parent, it is no longer a grandparent visitation issue but one for the juvenile courts and should fall under the child endangerment statutes, not grandparent visitation statutes. The state does not have the authority to create statutory law that violates the United States Constitution. In *Marbury v. Madison* the United Supreme Court dealt with the issue of legislation versus the Constitution once again when it stated, "Between the alternatives there is no middle ground. The Constitution is superior, paramount law, unchangeable by ordinary means".[5] The Supremacy Clause in Article VI makes the Constitution and federal laws the "supreme Law of the Land". The state courts may not interpret the Bill of Rights or any other constitutional provision differently than does the Supreme Court The state does not

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[8] Utah Code Ann. 78-32-12.2

have the right to provide less protection to its citizens than the United States Constitution grants to all citizens. It can provide greater protection.[9] All other laws and judicial decisions are subject to its mandates. The Constitution therefore has higher authority than all other laws, including statutes and laws passed by congress and state legislatures. Utah's State Constitution is in lockstep with the United States Constitution. Utah's Code Ann. 30-5-2 is open-ended and allows for grandparent visitation "at the discretion of the court" and "when it is in the best interest of the child". In direct contrast, parent's rights are founded and ratified in the United States Constitution. Grandparent rights are statutory and are not fundamentally guaranteed.

Due process clause. Two such clauses are found in the U.S. Constitution, one in the 5th Amendment pertaining to the federal government, the other in the 14th Amendment which protects persons from state actions. There are two aspects: procedural, in which a person is guaranteed fair procedures and substantive which protects a person's property from unfair governmental interference or taking. Similar clauses are in most state constitutions. Substantive due process as defined by Black's Dictionary, sixth edition, is a doctrine the due process of the fifth and fourteenth amendments to the United States Constitution require legislation to be fair and reasonable in content as well as application. Such may be broadly defined as the constitution guarantee that no person shall be arbitrarily deprived of his life, liberty or property. The essence of substantive due process is protection from arbitrary and unreasonable action. Jeffries v. Turkey Run Consolidated School Dist., C.A. Ind., 492 F.2d 1,3.

Substantive due process dictates the courts may not apply and or execute any order that is in violation of Federal or United States Constitutional Law. The Supreme Court has relied on

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[9] Prune Yard Shopping Center v. Robins, 447 U.S. 74, 100 S. Ct. 2035, 64 L. Ed. 2d 741 (1980)

substantive due process to establish a general right to privacy.[10] The Due Process Clause of the Fifth and Fourteenth Amendment guarantees opportunity to be heard during a fair proceeding of any legal action in which they may assert relevant claims and defense. Specifically, a multitude of procedural protections have been recognized by the Supreme Court of the United States as essential to the concept of Due Process. The Fourteenth Amendment contains a component that "provides heightened protection against government interference with certain rights and liberty interests."[11] This heightened protection shall include "parents fundamental rights to make decisions concerning the care, custody, and control of their children".[12]

There are enumerated rights derived from our Constitution and other guarantees such as the Bill of Rights. There are other liberties and guarantees not specifically expressed in any provision of the Constitution. These rights and liberties are unenumerated rights and are derived from Supreme Court precedent, common law, history and moral philosophy. Such rights "represent the very essence of ordered liberty" and embody "principles of justice so rooted in the traditions and conscience of our people as to be ranked fundamental".[13]

A parent has a duty and an obligation to provide for his or her children. Failure to do so can result in civil and or criminal actions to be taken against the offending parent. However, if a parent is to be held to this standard, as they should be, is it not right that a parent have the ability to make the appropriate decisions regarding the actions, environment, social setting and who they will be allowed to associate with? If the state court takes the position of inserting its decision in the place of and

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[10] Roe v. Wade 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973)

[11] Washington v. Glucksberg, 521 U.S. 702, 719, 720 (1997)

[12] Stanley v. Illinois, 405 U.S. 645, 651 (1972)

[13] Palko v. Connecticut, 302 U.S. 319, 58 S. Ct. 149, 82 L. Ed. 288 (1937)

over the objections of a fit and proper parent, should the state now stand in the shoes of the parent and be held liable for the actions of the child? Should they not also be liable for any harm or injury that may befall the child while in the temporary custody and control of a third party over the objections of the custodial parent. In *Reno v. Flores*,[14] it was held:

> "Accordingly, so long as a parent adequately cares for his or her children, there will normally be no reason for the state to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."[14]

Grandparent visitation has been a judicial issue for well over one hundred years. In the *Succession of Reiss*, 46 La. Ann. 347; 15 So. 151; (1894) it was held "The courts have no jurisdiction to interfere as to when and how a maternal grandmother may visit her grandchildren". In *Troxel v. Granville*[7] the United States Supreme Court cited to a multitude of benchmark cases, beginning with *Meyer v. Nebraska* in 1923 and including cases ending with *Dodge v. Graville* in 2001. All of these cases are supportive of the parent's position, are being relied upon, and are listed in the table of other authorities.

One of the key arguments made by both the Washington Supreme Court and the United States Supreme Court in *Troxel v. Granville*[7] centered on the issue of any third party seeking visitation. Even though the Utah statute does not allow for an unrelated third party to seek visitation, we have found that once out of the control of the custodial parent, the grandparent can and will place the child with not only third parties of their choosing, but also release the child out of their control.

By using the language "such as whether" in its statute, Utah has given the court completely unfettered authority to grant

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[14] Reno v. Flores, 507 U.S. 292, 301-304 (1993)

visitation to petitioning grandparents based on any whim it may have. The Utah statutes have turned the fit and proper parent into a defendant with the burden of being guilty until proven innocent. Justice Kennedy in his dissenting opinion in *Troxel v. Granville* stated:

"It must be recognized . . . That a domestic relations proceeding in and of itself can constitute state intervention that is so disruptive of the parent-child relationship that the constitutional rights of a custodial parent to make certain basic determinations for the child's welfare becomes complicated . . . If a single parent who is struggling to raise a child is faced with the visitation demands from a third party, the attorney's fees alone might destroy her hopes and plans for the child's future."[7]

As applied in this case, should either or both of Utah's 30-5-2 statutes and the related contempt statute one, be considered a violation of the parent's rights to due process and a violation of his civil rights and two, be considered unenforceable? The answer to both questions should be yes.

III

GRANTING NON-PARTY RELIEF

The original complaint was filed in the state of Utah by the maternal grandmother, Darlene Uzelac, in May, 2000. At the time of filing, the maternal grandmother and the maternal grandfather, Robert Uzelac, were divorced. Robert Uzelac, for his own reasons elected not to file as a party in interest in the litigation. At some point after the filing of the complaint, Robert Uzelac and Darlene Uzelac remarried. Robert Uzelac has never made any filing to become a petitioner or a party to the action in any other capacity.

At hearing in the trial court presided over by Judge Michael K. Burton, the court granted visitation to both the grandmother

and the grandfather. Visitation for the grandfather had not been sought in the pleadings. The case was re-assigned to Judge Joseph C. Fratto. At the only hearing over which Judge Fratto presided, conducted on January 9, 2003, he increased the visitation for the grandfather, even though, once again it had not been sought in the pleadings and he was not included in any prayer for relief. The err contained in the court's ruling was brought forward in a motion, by the parent, pursuant to Rule 60(b) U.R.C.P. asking the court to vacate its order. The motion pursuant to Rule 60(b) U.R.C.P. was denied with a minute entry and without oral argument. There were no findings of fact or conclusions of law given by the court to support the granting of visitation to the grandfather. There are no state statutes allowing the court to issue such an order. The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property without due process of law." " We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart guarantees more than fair process."[7]

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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Appendix

A. Order of Dismissal – United States Tenth Circuit Court of Appeals

UNITED STATES COURT OF APPEALS FOR TENTH CIRCUIT

DARRYL THURGOOD

Plaintiff – Appellant,

v.

No. 03-4030
(D.C. No. 2:02-CV-1385-DS)
(D. Utah)

HONORABLE MICHAEL K. BURTON and HONORABLE DAVID S. YOUNG each individually, and in their capacity as Third District Court Judge; STATE OF UTAH,

Defendants – Appellees.

ORDER AND JUDGMENT*

Before **EBEL,** Circuit Judge, **BRORBY,** Senior Circuit Judge, and **MURPHY,** Circuit Judge.

Plaintiff Darryl Thurgood, appearing pro se, moves for a stay pending appeal, asking this court to enjoin the Third District Court of the State of Utah from enforcing state court orders concerning child custody, evaluation, and visitation. We deny the stay and affirm the dismissal of his civil rights suit for lack of jurisdiction.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disflavors the citation of orders and judgments; nevertheless, and order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3

Plaintiff filed his federal civil rights suit, arguing that the defendant state court judges interferred with his constitutional rights as a parent. In a thorough order, the district court dismissed plaintiff's suit for lack of jurisdiction under the *Rooker-Feldman* doctrine. *See Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923). As the district court repeated, "*Rooker-Feldman* precludes 'a party losing in state court . . . from seeking what in substance would be appellate review of [a] state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights.'" *Kenman Eng'g v. City of Union*, 314 F.3d 468, 473 (10th Cir. 2002) (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994)). The district court correctly noted that the *Rooker-Feldman* doctrine applies to all state court judgments. *See id.* We are convinced that plaintiff's suit is barred by *Rooker-Feldman*. Accordingly, we affirm the district court's order of dismissal.

The motion for stay is denied and the district court's judgment is AFFIRMED. The mandate shall issue forthwith.

ENTERED FOR THE COURT
PER CURIAM

B. Order of Dismissal -- United States District court

THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF UTAH CENTRAL DIVISION

DARRYL THURGOOD,
Plaintiff,

Case No. 2:02CV1385DS

v.

ORDER OF DISMISSAL

HONORABLE MICHAEL K. BURTON, individually, and in his capacity as Third District Court Judge; HONORABLE DAVID S. YOUNG, individually, and in his capacity as Third District Court Judge; the STATE OF UTAH; and JOHN DOES one through five.

Defendants.

Before the court is a Motion for Temporary Restraining Order filed by plaintiff Darryl Thurgood. Plaintiff has requested the court to expedite its disposition of his motion due to the press of related matters which are scheduled in state court. The court, in an attempt to comply with plaintiff's request and having carefully reviewed and considered plaintiff's submissions, hereby renders the following ruling.

BRIEF BACKGROUND

Plaintiff brings suit in this court in conjunction with state court proceedings concerning his minor daughter's custody and visitation orders. Plaintiff asserts that, after the death of plaintiff's ex-wife, the mother of plaintiff's daughter, defendant Honorable David S. Young of the Third Judicial District Court awarded plaintiff full custody of his daughter, granted her maternal grandparents court-ordered visitation rights, and ordered plaintiff "to participate in evaluation reviews with a court appointed [psychologist] to determine the best interest of the child." Complaint, p. 3.

Plaintiff appealed these rulings to the Utah Supreme Court, and his appeal was designated to be addressed by the Utah Court of Appeals. The Utah Court of Appeals then affirmed the rulings of the state court.

Plaintiff initially attempted to comply with the scheduled visitation, but then, unilaterally, and allegedly "due to problems and stress both to plaintiff and his daughter," plaintiff "limited" his daughter's visits with her grandparents. Complaint, pp. 3-4. Plaintiff alleges that his daughter's maternal grandmother " has pursued fixed, un-chaperoned and constant visitation" and "has continued to file motions to exercise alleged grandparental rights to forced visitation." Complaint, pp. 3-4. Subsequently, defendant Honorable Michael K. Burton of the Third Judicial District Court granted the grandmother's motions and permitted visitation by the grandfather, who was not a party to the motions, as well.

Plaintiff now brings a civil rights suit, pursuant to 42 U.S.C. §§ 1983 and 1985, against Judges Young and Burton and the State of Utah, stemming from the proceedings in state court. Plaintiff basically argues that Utah law and the defendant judges who have enforced it in Utah's state courts have deprived him of his fundamental constitutional rights as a parent to exercise proper judgment and discretion in determining how to care for his child and what is in her best interests. In an affidavit, plaintiff states he is fearful of his daughter's visiting her grandparents because he believes they are dishonest, untrustworthy, constitute a disruption in his relationship with his daughter, and may flee with the child to whereabouts unknown. Plaintiff further contends that, despite the fact that he argued these same constitutional issues before the state district court and the Utah Court of Appeals, his rights continue to be violated.

Included among plaintiff's documents filed in this court is a copy of an Order to Show Cause and a copy of a Notice of Motion for Sanctions which indicates a hearing is scheduled in state court January 9, 2003. Plaintiff argues this court should issue a temporary restraining order preventing the state court from enforcing the prior court-ordered visitation by the grand-

parents until his suit in this court can be resolved.

DISCUSSION

Through application of the *Rooker-Feldman Doctrine*, the court concludes it may not consider plaintiff s claims due to a lack of subject matter jurisdiction. In *Kenman Engineering v. City of Union*, ___ F.3d ___ , 2002 WL 31820939 (10th Cir. 2002), issued within the last month, the Tenth Circuit explained this doctrine:

> [T]he *Rooker-Feldman* doctrine prohibits a lower federal court from considering claims actually decided by a state court, . . . and claims inextricably intertwined with a prior state-court judgment . . . In other words, *Rooker-Feldman* precludes a party losing in state court . . . from seeking what in substance would be appellate review of [a] state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights.

Kenman Eng'g, 2002 WL 31820939 at *2. The *Rooker-Feldman Doctrine* applies to *all* state court judgments, regardless whether the judgment is entered by an intermediate court or the case has been appealed to the highest court in the state. *See id.* at *3; *see Facio v. Jones*, 929 F.2d 541, 542-43 (10th Cir. 1991); *Van Sickle v. Holloway*, 791 F.2d 1431, 1436 (10th Cir. 1986).

Of particular interest is *Anderson v. Colorado*, 793 F.2d 262, 263-64 (10th Cir. 1986). Like plaintiff, Mr. Anderson brought a Section 1983 claim against the State of Colorado and the judges of the First Judicial District Court of Colorado arising from alleged discriminatory practices by the Colorado courts in child custody disputes. In dismissing the case, the district court stated:

> It is not possible for this court to grant [the requested] relief without disrupting the judicial process of the Colorado courts. The defendants could not voluntarily accept a declaration from this court concluding that their decisions are void. The judicial action attacked in this case was taken in adversary proceedings and within the scope of the color of authority granted to the defendants. If there is error of constitutional moment, the remedy is through the Colorado appellate procedure and, ultimately, a review by the United States Supreme Court.

Anderson, 793 F.2d at 263. On appeal, the Tenth Circuit affirmed, noting that the lawsuit essentially seeks to undo the custody decision of the Colorado state court." *Id.* at 264. The appellate court stated: "Where a constitutional issue could have been reviewed on direct appeal by the state appellate courts, a litigant may not seek to reverse or modify the state court judgment by bringing a constitutional claim under 42 U.S.C. § 1983." *Id.* at 263. Mr. Anderson's recourse was to exhaust all appeals in the Colorado state court system, then file a petition for certiorari to the United States Supreme Court. Other custody-related cases in this circuit echo Anderson.[1]

Plaintiff has made the arguments he now brings in the instant case before the Utah district court and the Utah Court of Appeals. Thus, he has had a full and fair opportunity to raise all of his custody and visitation issues as well as his constitutional arguments. Plaintiff can neither start anew by rehashing the same issues in this court nor use the present case to block the Utah courts from enforcing their own fully-litigated orders and judgments. Plaintiff's recourse is to file a petition

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1 *See, e.g., Schwartz v. Wakefield*, No. 95-1008, 1996 WL 108521 (10th Cir. Mar. 1, 1996); *Jenkins v. MaQueen*, No. 94-4072-DES, 1995 WL 405282 (D. Kan. June 7,1995); *Gragg v. Nebraska*, No. 93-4191 -SAC, 1994 WL 262690 (D. Kan. May 17, 1994); *Dickerson v. Curtis*, 661 F. Supp. 1084 (D. Colo. 1987).

for *certiorari* to the United States Supreme Court. Accordingly, plaintiff's Motion for a Temporary Restraining Order is DENIED.[2] This case is dismissed in its entirety with prejudice.

DATED this 9th day of January, 2003.

BY THE COURT:

s/.
DAVID SAM
SENIOR JUDGE
U.S. DISTRICT COURT

C. UNITED STATES CONSTITUTION

Amendments

4th The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

5th No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment

2 Although the court need not address other arguments which foreclose a temporary restraining order in this case, the denial of the order is supported by additional grounds. Judges Young and Burton are not subject to injunctive relief for actions taken within their judicial roles unless "a declaratory decree was violated or declaratory relief [is] unavailable." 42 U.S.C. § 1983. Nothing in the record suggests that such are the circumstances here. Moreover, the State of Utah is not a "person" for purposes of Section 1983, pursuant to the Eleventh Amendment, regardless of the relief sought, unless the state consents to suit, waives its immunity, or its immunity is overriden by Congress.

of a Grand Jury, except in cases arising in the land or navel forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

14th Section (1) All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Section (2) Representatives shall be appropriate among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for the President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State or the members of the Legislatures thereof is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridge, except for participation in rebellion, or other crime the basis representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State .

Section (3) No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under

any State who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may be vote of two-thirds of each House, remove such disability.

Section (4) The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section (5) The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

United States Constitution Title 42
Subsection I Section 1983
Civil action for deprivation of rights

Every person who, under color of any statute, ordinance regulation, custom regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was

unavailable. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

United States Constitution Title 42
Subsection I Section 1985
Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties if his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him or of his being or having been such juror; or if two or more persons conspire for the purpose of impending, obstructing, or defeating, in any

manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of person of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section; if one or more persons engaged therein do; or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury of deprivation, against any one or more of the conspirators

D. UTAH STATE CONSTITUTION

Article (1) Declaration of Rights

Inherent and inalienable rights

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates if their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Section (7) Due Process of Law

No person shall be deprived of life, liberty or property, without due process of law.

Section (24) Rights retained by the people

All laws of a general nature shall have uniform operation

Section (25) Rights Retained by the People

This enumeration of rights shall not be construed to impair or deny others retained by the people.

Section (27) Fundamental Rights

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

D. Revised Code of Utah Ann. 30-5-2(1)(2)(a-g)(6):

(1) Grandparents have standing to bring an action in district court by petition requesting visitation in accordance with the provisions and requirements of this section.

(2) There is a rebuttable presumption that a parent's decision with regard to grandparent visitation is in the grandchild's best interest. However, the court may override the parent's decision and grant the petitioner reasonable rights of visitation if the court finds that the

petitioner has rebutted the presumption based upon factors which the court considers to be relevant, such as whether:

(a) the petitioner is a fit and proper person to have visitation with the grandchild;

(b) visitation with the grandchild has been denied or unreasonably limited;

(c) the parent is unfit or incompetent; or

(d) the petitioner has acted as the grandchild's custodian or caregiver, or otherwise has had a substantial relationship with the grandchild, and the loss or cessation of that relationship is likely to cause harm to the grandchild; or

(e) the petitioner's child who is a parent of the grandchild has died; or

(f) the petitioner's child, who is a parent of the grandchild has been missing for an extended period of time; or

(g) visitation is in the best interest of the grandchild.

(6) Grandparents may petition the court as provided in Section 78-32-12.2 to remedy a parent's wrongful noncompliance with a visitation order.

E. Former Utah Code Ann. 30-5-2(1)(2)(3)(a-e)(5)

(1) Grandparents have standing to bring an action in district court requesting visitation in accordance with the provisions and requirements of this section.

(2) The district court may grant grandparents reasonable visitation, if it is in the best interest of the grandchildren, in cases where a grandparent's child has died or has become a non-custodial parent through divorce or legal separation.

(3) In cases other than those described in subsection (2), a grandparent may petition the court for reasonable

rights of visitation with a grandchild. The court may enter an order granting the petitioner reasonable visitation in accordance with the provisions and requirements of this subsection. There is a presumption that a parent's decision with regard to grandparent visitation is reasonable. The court may override the parent's decision and grant visitation rights if it finds that:

(a) it is in the best interest of the child;

(b) the petitioner is a fit and proper person to have rights of visitation with the grandchild;

(c) the petitioner has repeatedly attempted to visit the grandchild and has not been allowed to visit the grandchild as a direct result of the parent or parents;

(d) there is no other way for the petitioner to the grandchild without court intervention.

(5) Grandparents may petition the court as provided in Section 78-32-12.2 to remedy a parent's wrongful noncompliance with a visitation order.

F. Utah Code Ann. 78-32-12.2 - Sanctions

(1) For purposes of this section:

(a) "Make up parent-time" means parent-time which is:

(i) of the same type and duration of parent-time as that which was denied, including parent-time during weekdays, holidays and during extended parent-time periods;

(ii) to be made up within one year after the court has entered its order of make up parent-time; and

(iii) in the manner chosen by the aggrieved parent if it is in the best interest of the child.

(b) "Parent-time enforcement order" means an order to enforce compliance with an original parent-time order through the use of sanctions.

(c) "Petition" means a petition brought by a parent, a grandparent as provided in Section 30-5-2, by other immediate family members, or upon the court's own motion alleging that a parent is not complying with a parent-time order in decree of divorce or a subsequent parent-time order which may be brought at different stages in the alleged pattern of non-compliance:

(i) a first petition is a petition to enforce an original order of parent-time or a petition filed after three years from the last parent-time enforcement order;

(ii) a second petition is a petition filed within three years following entry of the first parent-time enforcement order; and

(iii) a third petition is a petition filed within three years following entry of the second parent-time enforcement order.

(d) "Substantial noncompliance" means conduct which:

(i) substantially interferes with a court-ordered parent-time schedule; or

(ii) interferes with a parent's rights to frequent, meaningful, and continuing access with the child and which substantially impairs that parent-time relationship.

(2) Upon a first petition, the court shall order:

(a) if the first petition is uncontested, by default:

(i) permanent injunction enjoining the noncompliance with the court's parent-time order;

(ii) make up parent-time order for the aggrieved parent and child; and

(iii) participation in workshops, classes, or individual counseling to educate the parent about the importance of complying with the courts

order and providing the child with a continuing relationship with both parents as provided in Subsection 78-32-12.1(1)(b); or

(b) if the first petition is contested, the court shall hold a hearing to determine by a preponderance of the evidence whether there has been a substantial noncompliance with the parent-time order.

(3) Upon a finding of substantial noncompliance, then the court shall order:

(a) actual cost including attorney fees and court cost to the prevailing party;

(b) make up parent-time for the aggrieved parent and child;

(c) a minimum of ten hours of compensatory service as provided in Subsection 78-32-12.2(1)(a); and

(d) a permanent injunction enjoining the noncompliance with the court's parent-time order.

(4) Upon a finding of substantial noncompliance, the court may order:

(a) mediation with the requirement to report back to the court on the results of mediation within 30 days;

(b) participation in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing the child with a continuing relationship with both parents as provided in Subsection 78-32-12.2(1)(b); or

(c) a fine or jail sentence or other appropriate sanctions as provided under contempt of court in Section 78-32-10.

(5) Upon a second petition, the court shall order:

(a) if the second petition is uncontested, by default:

(i) actual costs including actual attorney fees and court costs;

(ii) make up parent-time to be provided for the aggrieved parent and child;

(iii) a minimum of tem hours of compensatory service as provided in Subsection 78-32-12.1(1)(a); and

(iv) impose a fine or jail sentence or other appropriate sanctions as provided under contempt of court in Section 78-32-10; or

(b) if the second petition is contested the court shall hold a hearing to determine by a preponderance of the evidence whether there has been a substantial noncompliance with the parent-time orders.

(6) Upon a finding of a substantial noncompliance, the court shall order:

(a) actual costs including actual attorney fees and court costs to the prevailing party;

(b) make up parent-time to be provided for the aggrieved party and child at twice the amount of time previously wrongfully denied and under the same conditions as provided in Subsections 78-32-12.2(3)(a) through (c);

(c) a minimum of 20 hours of compensatory service as provided in Subsection 78-32-12.1(1)(a);

(d) a contempt order which imposes a fine or jail sentence as provided in Section 78-32-10; and

(e) the violator to post bond or security in the amount determined by the court to insure future compliance.

(7) The court may impose additional sanctions which may include any additional remedies, terms, or conditions which are consistent with the court's previous order.

(8) Upon a third petition, the court shall order:

(a) if the third petition is uncontested, by default:

(i) actual costs including actual attorney fees and court costs;

(ii) make up parent-time to be provided for the aggrieved party and child at twice the amount of time previously denied and under the same conditions as provided in Subsections 78-32-12.2(3)(a) through (c);

(iii) a minimum of ten hours of compensatory service as provided in Subsection 78-32-12.1 (1)(a); and

(iv) imposes a fine or jail sentence or other appropriate sanctions as provided under contempt of court in Section 78-32-10; or

(b) if the third petition is contested, the court shall hold a hearing to determine by a preponderance of the evidence whether there has been a substantial noncompliance with the parent-time orders.

(9) Upon a finding of substantial noncompliance, the court shall order:

(a) actual costs including actual attorney fees and court costs to the prevailing party;

(b) a finding that there has been a prima facia showing of a substantial change of circumstances which is against the best interest of the child for purposes of modification of custody and order a temporary change of custody for a duration to be determined by the court; and

(c) a finding that there has been a probable cause showing of custodial interference as provided in Section 76-5-303 and order the case to be referred to the county attorney for prosecution.

(10) The court may decline to issue an order with the alternative sanctions as provided in Subsections 78-32-12.2(2) through (9) although the petitioner has met his burden of proof if the court provides findings on the

record explaining why a sanction or sanctions were not imposed.

(11) The non-custodial parent shall give the court and the custodial parent written notice of his intention to exercise the make up parent-time at least seven days before the proposed visit if it is to be on a weekday or weekend, and at least 30 days before the proposed visit if it is to be on a holiday or an extended parent-time period.

(12) The court shall suspend any proceedings under Subsection 78-32-12.2. if substantial allegations of child abuse or child sexual abuse are under investigation to a case is pending in the courts on the allegations.

(13) The filing of any petition under this section which is found to be without merit and not asserted or defended against in good faith shall be subject to sanctions as determined by the court.

G. Utah Code Ann. 78-32-10 - Contempt – Action by the Court

Upon the answer and evidence taken, the court shall determine whether the person proceeded against is guilty of the contempt charged. If the court finds the person is guilty of the contempt, the court may impose a fine not exceeding $1,000.00 order the person incarcerated in the county jail not exceeding 30 days, or both. However a justice court judge or court commissioner may punish for contempt by a fine not to exceed $500.00 or by incarceration for five days or both.

H. Need to Add Title

IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH.

In the Matter of the Estate of: **ORDER**

SAMANTHA TAYLOR THURGOOD,

Probate No. 003900606

A Minor.

Judge David S. Young

THE ABOVE-ENTITLED MATTER having come before the court for hearing Upon the motion of the Petitioner, Ms. Uzelac, for a custody evaluation, for an order regarding visitation, for order to comple, and raising objections to the proposed previous of-der in this case, the Petitioner, Ms. Uzelac, having been present and represented by her counsel of record, Mr. Scott Kunkel, the natural father of the minor child in issue having been present and represented by his counsel of record, Mary C. Corporon, the court having proceeded to hear the arguments of counsel and having reviewed the file and the pleadings contained therein, based thereon and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED

1. The court declines to consider Petitioner's objections to the previous proposed order of tills court, for reason that counsel, Mary C. Corporon, is new Counsel In this matter, and was not aware of the pending objections to the proposed order. Ms. Corporon and Mr. Kunkel are ordered to consult with each other to determine if the issues surrounding the last proposed order can be resolved by counsel, and, if not, the matter shall come before the court for further hearing, upon notice of either party.

2. The court finds that the rebuttable presumption in favor of a biological parent being awarded custody of and guardianship of a minor child has not been rebutted in, this case. Therefore, the father of the minor child, Mr. Thurgood, is the sole surviving parent, is the custodian and legal guardian of the minor child in issue.

3. The Court finds that Mr. Thurgood, the father of the minor child Ill question, need not participate in a custody evaluation, for reason that the issue of custody of the minor child is simply not subject to consideration nor discussion in this court unless and until Mr. Thurgood is proven to be an unfit parent or to have abused or abandoned the minor child. None of these prerequisites have been established.

4. The court finds that the medical records of Mr. Thurgood are private and privileged documents of Mr. Thurgood. The motion to compel production of any of those medical records is denied. The prior order of the court prohibiting Mr. Kunkel, counsel for the Petitioner from disseminating those records to Ms. Uzelac, or to any other party shall remain in full force and effect as the permanent order of the court, and Mr. Kunkel is ordered that he shall withhold those records from all parties other than Mr. Thurgood and his counsel, and Mr. Kunkel is ordered to release all records, and all copies thereof, to Mr. Thurgood, through counsel, forthwith.

5. The court finds that there ought to be some future visitation between Ms. Uzelac, the Petitioner, and the minor child in question, at Mr. Thurgood's approval as the father and custodian of the child, and at the child's approval. The court finds that all parties ought to cooperate to see that the child visits appropriately with her grandmother, Ms. Uzelac, under reasonable and liberal circumstances.

6. The court finds that there is not sufficient evidence before this court to conclude that any "drive-bys" of Mr. Thurgood's home have been conducted by Ms. Uzelac or anyone at her direction, and the court finds that the evidence, as of the hearing of September 8, 2000, was that the drive-bys were all unfortunate coincidence in this case.

7. The court finds that the father is the parent and custodian of the minor child, and that his position as such is to be respected by the court and all parties to this action.

DATED THIS 7th day of February 2003.

BY THE COURT

s/. _____
DAVID S. YOUNG
District Court Judge

I. Need to Add Title

IN THE THIRD Judicial DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the Estate of: **ORDER**

SAMANTHA TAYLOR THURGOOD,

Probate No. 003900606
Judge Michael Burton

A Minor.

THE ABOVE-ENTITLED Matter came on for hearing before the Honorable Judge Michael Burton on the 11th day of June 2002, with the Petitioner appearing in person with her attorney of record, J. Bruce Reading, and the father appearing in person with his attorney of record, Mary Corporon. The Court having heard arguments and proffer of the parties and being fully advised the premises, enters the following

ORDER

1. There has been a substantial delay in the visitation evaluation that is to be performed by Dr. Valerie Hale.

2. It is Ordered that Mr. Thurgood does not have to sign any agreement with Dr. Hale.

3. Mr. Thurgood does not have to reveal any personal information about himself to Dr. Hale without a showing by Dr. Hale through letter or affidavit as to the basis as to why that personal information relates to a relationship between the Minor child, Samantha, and the grandparents, the Uzelacs. That letter or affidavit may be presented to the Court in writing and if argument is required, the Court will entertain such argument by phone.

4. The issue of attorney fees is reserved.

5. The Court finds that visitation both by phone and *in person has been terminated by Mr. Thurgood for over one year. It is in the child's best interest and 'in the 'interests of the visitation evaluation that contact be reestablished between grandparents and the child.

6. The Court finds that the child is not a stranger to the grandparents and, in fact, lived with or frequently visited the grandparents during the first four years of her life.

7. Based upon the delay in having the visitation evaluation completed, the Court acknowledges the natural father's desire to have a gradual "break in" schedule on visitation. The Court also acknowledges the natural father's desire to have supervision of the visitation 'in ordering that the visitation shall progress on a two, four and six hour graduated *increment of visitation with the two and four hour visitation being supervised. The schedule for temporary visitation will be allowed to the grandparents as follows:

a. On June 23, 2002, to be supervised by Will Win for a period of two hours.

b. Supervised visitation on July 7, 2002, for a period of four hours to be supervised by Will Win and,

c. Unsupervised visitation six-hour visitation on July 19, 2002. If, after this six hour visitation, Mr. Thurgood believes that there are definite problems with unsupervised-visitation, then counsel for Mr. Thurgood is required to obtain a time at

the earliest possible date from the court's clerk to schedule a conference between the bench and counsel for both parties to address any issues raised by Mr. Thurgood.

d. Providing that unsupervised visitation went reasonably well, commencing August 2, 2002, through August 4, 2002, would be a normal weekend overnight, unsupervised visitation commencing at 6:00 p.m. on Friday and ending at 6:00 p.m. on Sunday.

e. Thereafter, visitation will continue on the first weekend of each month for grandparent visitation until further order of the Court.

8. Both sides should be as kind as they can be to cooperate to make the visitation a pleasant experience for Samantha.

9. The Court is reluctant to find Mr. Thurgood in contempt and desires to encourage Mr. Thurgood's compliance to participate in the visitation evaluation.

10. Counsel for the Petitioner will prepare the order.

Dated this 23rd day of August 2002.

By the Court

s/._____
Michael Burton
District Court Judge

J. Need to Add Title

IN THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the Estate

Samantha Taylor Thurgood,

ORDER ON MOTIONS FOR SANCTIONS AND CONTEMPT

A Minor. Probate No. 003900606
Judge Fratto

The Motion of the Petitioner, Darlene Uzelac, for Contempt and the motion filed by Darryl Thurgood for sanctions were heard before the Honorable Joseph C. Fratto, Jr. on the 9th day of January, 2003. Petitioner appeared in person with her attorney of record J. Bruce Reading. Darryl Thurgood, the natural father of the minor above-named, appeared *pro se*. The Court having heard arguments of the parties and being fully advised in the premises enters the following order.

1. The Court finds that there is no bad faith filing on the part of the attorney for the Petitioner and based upon that finding, Darryl Thurgood's motion for Sanctions is denied.

2. The Petitioner has moved for contempt on two issues:

a. The failure of Darryl Thurgood to cooperate in the child visitation evaluation ordered to be performed by Valerie Hale, Ph.D.; and

b. Violation of the Court Order allowing visitation by the Petitioner of the minor child, Samantha Taylor Thurgood.

3. As to Darryl Thurgood's failure to cooperate in the child visitation evaluation, the Court finds that the proffers made do not support, at the present time, a finding of contempt.

4. The Court finds that Mr. Thurgood has wilfully violated the Order of the Court after having understood that Order; in that he has not made available the child for visitation with petitioner. Based upon this finding, the Court orders that Darryl Thurgood be sentenced to sixty (60) days in jail for his contempt.

5. The Court will stay the imposition of this sentence upon the condition the Mr. Thurgood purge himself of the contempt by delivering the child to the residence of the Uzelacs between 6:00 and 6:30 p.m. on alternating Fridays commencing with the 10th of January, 2003. The child will remain the Petitioner's care and custody until Sunday and will be picked up by Mr. Thurgood between 6:00 and 7:00 p.m.

There be no discussion between the maternal grandparents and Mr. Thurgood during the transfer of the child. Such visitation shall continue during the pendency of this matter. As a further condition, Mr. Thurgood is to pay petitioner all attorney fees incurred in bringing the motion for order to show cause.

6. Should Mr. Thurgood pay the attorney fees in a timely fashion and successfully participate in the visitation outlined, then his contempt may be purged. If he fails in payment of the attorney fees or to successfully participate in visitation, Petitioner may file an affidavit with this Court and request that a commitment be issued.

Dated this 31st day of January 2003.

By the Court:
s/.
Joseph C. Fratto
District Court Judge

Approved as to form:

_____
Darryl Thurgood
Natural Father

NOTICE PURSUANT TO RULE 4-504 OF THE RULES OF JUDICIAL ADMINISTRATION TO THE NATURAL FATHER:

NOTICE IS HEREBY GIVEN that pursuant to Rule 4-504 of the Rules of Judicial Administration of the District and Circuit Courts of the State of Utah, that this Order prepared by the Respondent shall be the Order of the Court unless you file an objection in writing within five (5) days from the date of the service of this notice.

DATED this 14th day of January, 2003.

Scalley & Reading, P.C.

s/